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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,246	12/20/2001	Jeffrey E. Fish	KCX-400 (15421)	9059
22827	7590	02/23/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,246

Applicant(s)

FISH ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on November 23, 2004, has been entered.
2. It is noted that in the previous response the claims in this case were confused with the claims in 10/027,787 because the amendment filed on June 23, 2004, in 10/027,787 actually listed the application as 10/027,246 in the header. To clarify the record it is noted that the amendment submitted on June 23, 2004 has been entered. Claims 9 and 26 have been cancelled. Claims 1, 16, and 23 were amended. The pending claims are 1 – 8, 10 – 25, and 27 – 30.
3. The rejection for claims 25 – 30 over Baer et al. and Bjornberg et al. is changed back to a rejection based only on Baer et al. since the claims do not require suction to facilitate positioning of the particles. Hence, there is no reason to combine Baer et al. with Bjornberg et al.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1 – 8, 10 – 25, and 27 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,892,535) in view of Tanzer et al. (5,411,497).
6. Claims 1 – 8, 10 – 25, and 27 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. for the reasons of record.

Response to Arguments

7. Applicant's arguments filed November 23, 2004 have been fully considered but they are not persuasive. The applicant argues that Bjornberg et al. fails to teach that both substrates are textured and possess elevations and depressions (response, page 6 – 9). As set forth in the previous Office Action, it is the examiner's position that the base layer taught by Bjornberg et al.

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would inherently bulge out to some degree creating elevations and depressions in the base layer because the base material is a flexible material and the weight of the particles in the pockets would prevent the base layer from remaining completely flat. The applicant also argues that one of ordinary skill in the art would interpret the term "textured" as requiring a material which would sustain the textured form permanently. However, the applicant did not define textured in the specification and there is nothing in the commonly understood definition of textured which requires texturing to be a permanent change. If something contains a crinkled, wavy or generally has an unsmooth surface, then the material is textured in that configuration, even if the texture could be removed from the surface. Also, the applicant has provided no evidence that texturing requires a permanent change in the substrates structure. Further, the disclosure provides no specific dimensions with regards to the difference in height between the elevations and depressions to define those terms as requiring a change in height which is greater than what would be created when the base layer in Bjornberg et al. bulges out due to the weight and pressure of the particles. Therefore, the base layer will not remain completely flat in the finished product.

Further, it is noted that the process to create the claimed invention is similar to the process taught by Bjornberg et al. In both processes, the claimed process and Bjornberg et al, a vacuum is applied to one substrate to form the pockets, then the particles are deposited in the pockets, and finally the second substrate is placed on the first substrate and bonded together at the regions where there are no particles. The applicant does not disclose any special processing is preformed on the second substrate to create the textured surface or the elevations and depressions in the second surface. And the figures show that during processing one of the substrates is flat, but both substrates are textured in the final product. Therefore, Bjornberg et al.

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is produced by similar methods as the applicant and would therefore, have a final product where both substrates are textured to some degree. Thus, the rejection is maintained.

Finally, the applicant argues that the rejection based on Bjornberg et al. and Tanzer et al. relies on improper hindsight to create the combination since the only motivation for the combination is the applicant's invention (response, page 9). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Tanzer et al. discloses that absorbent products do not efficiently utilize the superabsorbent material and the liquid uptake of the superabsorbent material is limited due to the expansion of the particles being limited by the closed pockets. Tanzer et al. discloses that using a water-sensitive attaching means to bond the pocket regions allows the absorbent pad to maintain the location of the superabsorbent material while accommodating the increased volume of the swollen super-absorbency material (column 1, lines 50 – 63). The water-sensitivity of the attaching means helps to maintain the channels between the pocket regions to facilitate the flow of the liquid to each of the pocket regions while more efficiently utilizing the absorbent material and improving the absorption characteristics of the structure (column 1, line 64 – column 2, line 5). Thus, the teaching to use a water-absorbent adhesive in absorbent products comes explicitly from Tanzer et al. Even without a teaching in Brojnberg et al. to modify the bond strength of the pocket regions, the teaching supplied by Tanzer et al. is sufficient to teach one of ordinary skill in the art that absorbent products can be

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modified to allow the pockets to break open so that the absorbency of the absorbent particles can be maximized. Therefore, the rejection is maintained.

8. The applicant argues that Baer et al. fails to teach the length to width ratio recited in the claims (response, page 9). While it is true that Baer et al. doesn't teach the exact ratio, Baer et al. does teach that the pocket sizes can be various shapes and sizes. Therefore, Baer et al. explicitly suggests that the size of the pockets can change. While, it is true that Baer et al. does not teach changing the size of the pocket to facilitate the delamination of the pockets, the prior art does not need to modify the structure for the same reason as the applicant. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Therefore, the motivation provided by Baer et al. is sufficient motivation for one of ordinary skill in the art to change the size and shape of the pockets and choose the claimed length to width ratio. Further, it is noted that the applicant has provided no evidence to show that the claimed length to width ratio produces unexpected properties and the applicant fails to claim that the length to width ratio has a specific relation to the delamination of the pockets. Thus, these features are not sufficient to distinguish over the prior art. Therefore, the rejection is maintained.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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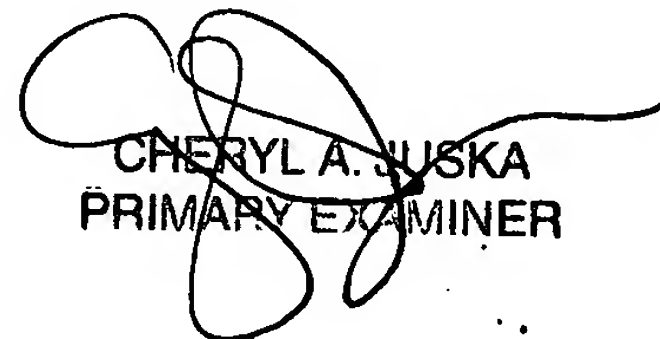
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
February 15, 2005



CHERYL A. JUSKA
PRIMARY EXAMINER